

CLEAN AIR FOR UKRAINE

Roadmap for reducing industrial
air pollution in Ukrainian cities
– overview of policy options and
recommendations

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DISCLAIMER

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The research for this study was completed during 2018 and 2019 and reflects legislative and political situation in Ukraine at the beginning of 2019. Although the authors are aware of rapid development of Ukrainian legislation afterwards, it was not possible to include them in the final text of the study.

ROADMAP FOR REDUCING INDUSTRIAL AIR POLLUTION IN UKRAINIAN CITIES

Overview of policy options and recommendations



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EXECUTIVE SUMMARY

This policy paper follows up on the comparative study titled “Dirty Skies Above: Regulation of Air Pollution in Ukraine and the EU” prepared by Czech NGO Arnika - Citizens Support Centre in cooperation with Ukrainian NGO Ecoaction. In order to avoid duplication of contents, this policy paper focuses largely on developing policy options and recommendations rather than problem description. For the nature of issues, with regard to which recommendations are developed, refer to the comparative study available online under <https://english.arnika.org/publications>.

This policy paper was prepared in consultation with environmental experts and NGOs (mainly SPKR (Stop Poisoning Kriviy Rig)) and grassroots civil society movements in the field. It is intended primarily for Ukrainian government and regional authorities, public officials, and policymakers involved in the ongoing reform of air pollution regulation, monitoring, and inspection, particularly in light of the 2019 parliamentary elections in Ukraine and the current formation of the new government and its bodies.

Given its purpose and scope this policy paper does not elaborate on all policy choices, but rather on the most feasible and realistic alternatives for the context. It also does not analyse every regulatory aspect, but rather provides a general overview of selected policy options.

1. ENVIRONMENTAL GOVERNANCE AND MANAGEMENT

The environmental governance system in Ukraine has inherited a constantly permeating Soviet legacy despite ongoing reforms that date back to 2010 when the country began to decentralize public administration. The system underwent significant changes due to the Law on “*Introducing Changes to Certain Legislative Acts of Ukraine with the Aim of Optimization of Powers and Authorities of the Executive Authorities in the Sphere of Ecology and Nature Resources, Including the Local Level*”¹, that entered into force in November 2012, followed by the Resolution of the Cabinet of Ministers on “*Liquidation of the Territorial Branches of the Ministry of Environment.*”²

The law transferred a number of functions (e.g., permits for certain industrial activities, monitoring, supervision) from the central government (Ministry of Ecology and Natural Resources) to local governments (oblast state administrations). Oblast branches of the Ministry of Ecology and Natural Resources (MENR) were abolished and respective departments in oblast state administrations were created. These oblast state administrations then started creating their own departments of environmental protection.³

In July 2019, Ukraine elected a new parliament (Verkhovna Rada) dominated by current president Volodymyr Zelensky’s Servant of the People Party (“Sluga Naroda”). The newly formed government has immediately started introducing changes in public administration structure and personnel. MENR was liquidated and its competence and responsibilities merged with those of the Ministry of Energy, creating the Ministry of Energy and the Protection of Environment (MEPE). The organizational structure of MEPE and its subordinated agencies are yet to be determined.

In 2016, the IBRD/World Bank issued a report “Ukraine: Country Environmental Analysis”, in which it suggests that first and foremost Ukraine should prepare and implement **Roadmap for Reform of Environmental Management**.⁴ We very much support this idea, although, unlike the report that suggests making a short-term (1 – 2 years) assessment, we would recommend longer-term projections, ideally for the term of the newly elected government.

The roadmap is needed for the new government to successfully complete the decentralization reform as well as to implement the EU–Ukraine Association Agreement, which will create a brand new legal and regulatory system. This requires a comprehensive review of roles and responsibilities of government

1 Law No. 5456-VI of 2012 available at [<https://zakon.rada.gov.ua/laws/show/5456-17>].

2 Resolution No. 159 of 2013 available at [<https://www.kmu.gov.ua/npas/246160947>].

3 International Bank for Reconstruction and Development/World Bank (January 2016). *Ukraine Country Environmental Analysis*, available at [<https://openknowledge.worldbank.org/bitstream/handle/10986/24971/Ukraine000Coun0ironmental0analysis.pdf?sequence=4&isAllowed=y>], p. 14.

4 Ibid, p. xv.

bodies involved in environmental governance and management, and law enforcement so that they can efficiently function in a significantly different regulatory environment.

In this regard, we recommend that Ukraine carry out a practical review of the institutions involved in environmental management in terms of their ability and competence to implement EU environmental acquis (directives) accurately and efficiently.

At central level, tasks of the abolished MENR were taken over by the Ministry of Energy, creating the new Ministry of Energy and Protection of Environment (MEPE) to handle the environmental agenda. The first deputy minister, Iryna Stavchuk, previously a director of NGO “Ecodiya” and a climate change coordinator at National Environmental Centre of Ukraine, has been recently appointed. The structure of MEPE as well as that of the subordinated agencies previously coordinated by MENR is to be determined at the latest by the second half of 2020.

Ministries (in the most general sense) are central government authorities headed by a member of government. Their agenda and organizational structure should be flexible, yet stable. While it is common to replace a ministry’s leadership to reflect the winning party coming to power and adjust organizational structure after elections, it is neither usual nor recommendable to abolish an entire organization after every election-term. MENR already went through frequent restructurings, reorganizations, and leadership changes (17 ministers over 25 years).⁵ This trend should definitely not be transferred to the new MEPE.

In developed countries, ministries of environment usually have agenda related solely to environmental protection (air, water, soil) or associated fields such as forestry, energy, mineral resources, and land use (e.g. Czech Republic - “Ministry of Environment”⁶, Netherlands – “Ministry of Infrastructure and the Environment”⁷). In developing countries, on the contrary, there is a tendency to mix agendas that might not directly relate to environmental protection such as housing, public procurement, and territorial development (e.g., Bosnia – “Ministry of Environment and Tourism”⁸, Colombia – “Ministry of Environment, Housing, and Territorial Development”⁹).

Although agendas of the newly created MEPE (environment and energy) are related, it is important to make sure MEPE’s organizational structure is set up in such a way that the former agenda of MENR is not only automatically transferred to MEPE (i.e., former departmental structures of the Ministry of Energy), but that the departments previously forming Ministry of Energy are restructured and/or reorganized in such a way so as to adequately reflect the relevance of the dominating (general) environmental (i.e., protection of air, water, soil) and not only energy agenda. Strengthening MEPE’s capacities should go in line with the requirements of the EU-Ukraine Association Agreement.

5 Ibid, p. 29.

6 Ministry of the Environment of the Czech Republic, official website under <https://www.mzp.cz/en>.

7 Ministry of Infrastructure and the Environment, official website under <https://www.rijksoverheid.nl/ministeries/ministerie-van-infrastructuur-en-waterstaat>.

8 Federal Ministry of Environment and Tourism of Bosnia and Herzegovina, official website under http://www.fbihvlada.gov.ba/english/ministarstva/okolis_turizam.php.

9 Ministry of Environment, Housing, and Territorial Development, official website under <http://www.minambiente.gov.co/>.

Figure 1. Structure of the MEPE’s Subordinated Agencies

Ministry of Energy and the Protection of Environment		
State Ecological Inspectorate <i>(new body might be created)</i>	State Enterprises (9)	Natural Reserve Fund Organization (46)
State Agency of Water Resources	Public Joint Stock Company	
State Agency for Exclusion Zone Management		
State Agency for Geology and Mineral Resources	Research Organizations (3)	

Figure 2. Government Structures Involved in Environmental Protection

Environmental protection in Ukraine is coordinated by the State Ecological Inspectorate. It has 5 regional branches and 18 territorial departments (on oblast level).	Natural Reserve Fund Organizations are responsible for protecting the environment on specific areas.	Other involved organizations are State Agency for Water Resources and State Agency for Forest Resources.
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As of December 2019, when this policy paper was prepared, MEPE’s subordinated agencies and overall government structures involved in environmental protection were as displayed in figures 1 and 2. Although the new government apparatus is still being formed, the structure of MEPE’s subordinated agencies is not much different from that of its predecessor (MENR).

The government should definitely review the functions, responsibilities and subordination between MEPE and its agencies (figure 1) as well as between MEPE and other ministries, agencies and local authorities. It should also strengthen the capacity of other government (both central and local) organs that have responsibilities for environmental and natural resources management.

The government should further eliminate the multitude of administrations at central and local level responsible for environmental governance and the management of air pollution prevention with overlapping responsibilities and weak coordination among them.

In particular, we see that in addition to MEPE there are currently 7 other ministries involved in environmental protection, some of which, for instance, the Ministry of Justice have by nature absolutely nothing to do with this agenda. This certainly needs a review so that environmental agenda is vested in those ministries (and agencies) that by nature of their tasks and functions were established to deal with it.

Further, we would question the necessity of a large number of state organizations and enterprises (in particular 46 natural reserve fund organizations, 3 research organizations, and 9 state enterprises) with unclear environmental protection agenda and the scope of responsibilities.

At the local level, we see the fact that MENR oblast branches were abolished and instead departments of environmental protection in oblast state administrations created (with their own departments of environmental protection) as a positive step forward. Example of many EU countries with decentralized governance structures, such as the Czech Republic, show no regional branches of ministries of environment. Rather, the regional environmental protection agenda is vested in regional and district administrations (in Czech: “krajské úřady” and “okresní úřady”)¹⁰ as a part of exercising their self-governing powers.¹¹

For local authorities, only the general regulation on a “*Structural Subdivision of Local State Administration*”¹² was available as a source of guidance, so there was no clear regulation regarding the department’s structure or any detailed outline of functions. To complete the decentralization at local level and to outline departmental structure and scope of their responsibilities we recommend preparing a unified guideline for regional administrations. If the guideline is prepared at central level, we highly recommend involving regional administrations in drafting it.

At the local level, Ukraine should be also particularly careful not to merge potentially competing units (departments) of regional state administrations. This became a pressing issue especially in Vinnytsia and Khmelnytskyi regions, which tried to merge the functions of the department of agro-industrial development with the department of ecology and natural resources.¹³ These steps, as precedental in their form and extent as they were, were heavily criticized primarily by environmental activists as well as MENR (now MEPE).

Merging two structural subdivisions with different tasks, spheres of regulation, and directions of activity may have an array of negative implications. It may cause imbalance between the consumption of natural resources and their conservation and reproduction. Given the imbalance and incompatibility

10 Administrative division of the Czech Republic, available under: https://www.statnisprava.cz/rstsp/redakce.nsf/i/kraje_okresy_obce.

11 The Czech Republic is subdivided into municipalities (in Czech: “obce”), which are the basic territorial self-governing units, and into regions (in Czech: “kraje”), which are the higher territorial self-governing units, which have a right to self-government.

12 Regulation No. 887 of 26 September 2012, available at [<https://zakon.rada.gov.ua/laws/show/887-2012-%D0%BF>].

13 Ecoleague (2020), Position on Liquidation of the Department of Ecology and Natural Resources of Khmelnytskyi Regional Administration, available at (in Ukrainian) [<http://ecoleague.net/pozytsiia-vel-shchodo-ekoproblem/zaiavy-zvernennia/2017-rik/item/1390-pozytsiia-vel-shchodo-likvidatsii-departamentu-ekolohii-ta-pryrodnykh-resursiv-khmelnytskoi-oda>].

of regulatory goals and objectives, it becomes impossible to make effective management decisions and ensure a balanced (sustainable) development of the region. In the newly created structural unit there is a threat of conflict of interest between the economic and environmental sphere.

At both levels of governance, it is recommendable to enhance and provide appropriate capacity building and personnel training for state bodies regarding environmental management and principles of sustainable development with the involvement of the private sector and civil society. This activity should take into account all requirements of the EU-Ukraine Association Agreement and the commitments to be achieved thereunder.

When the agencies and central level and administrations at local level are finally determined, it is necessary to clearly define their functions to avoid gaps and/or overlaps between and among them.

Last, but not least, a public environmental expenditure review should accompany the functional review, to identify government resource allocations to different environment goals at central and regional levels.

2. ENVIRONMENTAL POLICY

The lack of adequacy of environmental policy (and legislation) and superficial or non-existent implementation remains one of Ukraine's major challenges in the field of environmental policy.

Currently, Ukraine has a draft National Action Plan for Environmental Protection for 2020-2025, which forms a part of the preparation process for the implementation of National Environmental Strategy of Ukraine until 2030 (to come into force in January 2020). MEPE has now launched a public debate on the new Concept of State Policy on Energy and the Environment.¹⁴ The environmental agenda and strategies in effect until 2020¹⁵ featured a number of gaps to avoid in the subsequent policy documents:

- **The environmental agenda is integrated into sectoral strategies, programmes, and activities, but the integration is weak and marginal and does not respect the principles of sustainable development.** For example, the *Strategy of Sustainable Development "Ukraine – 2020"* mentions environment under security issues, but does detail any environmental aspects in the first-priority reforms and programmes or in strategic indicators of implementation of the strategy. Similarly, the *National Strategy of Regional Development up to 2020* refers to sustainable development principles focusing on socioeconomic development of Ukrainian regions without regard to environmental protection and natural resources management. Its strategic indicators do not cover environmental issues and the environmental aspects are not considered in the list of priorities.¹⁶
- **Most of the sectoral strategies, programmes, and action plans lack clear prioritization among different policy goals, realistic target indicators, and clear timeframes to achieve the targets.** If the priority goals are not identified, it will be extremely difficult to implement them. National Environment Strategy (NES) (2020) refers to the baseline as a comparison, e.g., for reduction of air emissions or waste, but the baseline year and the baseline itself are missing. Most indicators are qualitative and not quantitative, which, yet again, makes monitoring of implemented measures quite difficult. Most NES indicators are quite ambitious, and many proved difficult to achieve.¹⁷
- **The strategies, programmes, and action plans lack efficient implementation mechanisms.**

¹⁴ The concept is available at: http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245434571&cat_id=35109.

¹⁵ National Environment Strategy 2020 (NES) (adopted by the Parliament in 2010) in effect until 2020.

¹⁶ International Bank for Reconstruction and Development/World Bank (January 2016). *Ukraine Country Environmental Analysis*, available at [<https://openknowledge.worldbank.org/bitstream/handle/10986/24971/Ukraine000Coun0ironmental0analysis.pdf?sequence=4&isAllowed=y>], p. 21.

¹⁷ Ibid.

- The way NES 2020 was implemented does not demonstrate effective environmental management and reforms, because it is difficult to stabilize the ecological situation and create environmental safety conditions, if there is initially no clear differentiation of functions, responsibilities, economic mechanisms and appropriate collaboration between all stakeholders.
- **Regional priorities are often missing from national environmental plans.** It is also necessary to ensure that a regional priority that obtains the status of a National Program, is fully funded. For example, the Decree of the President of 2010 declared the environmental situation around the city of Kalush (Ivano-Frankivsk oblast of south-western Ukraine) an “ecological catastrophe”. A subsequent programme for cleanup and emergency work was discontinued with only one component (liquidation of stored hexachlorobenzene) partially done. There were criminal investigations into the use of related funds from the state budget. In May 2015, NGO “EPL-Lviv” reported that UAH 874 million spent in 2010–2013 for cleanup did not reduce hexachlorobenzene contamination of the environment.¹⁸

18 Ibid, p. 40.

3. ENVIRONMENTAL LEGISLATION

The scope of Ukrainian environmental legislation is very broad and comprehensive (more than 300 legal acts) and its quantity often precedes quality. Its main weaknesses are that it is largely declaratory and lacks essential enforcement mechanisms to be effectively implemented. Many of the legal acts are not coordinated with each other and often contain mutually overlapping, vague, and redundant provisions. There are still norms, for which implementation procedures and regulatory framework have not been developed. No thorough regulatory impact analysis is conducted for proposed legislation. Thus, in the widest general sense, Ukraine should review the existing legislation to identify the key legal acts to revise and necessary regulations to adopt.¹⁹

The legislative and regulatory changes need to be conforming to international legal instruments binding upon Ukraine (including relevant EU legislation) and national law. In particular, they need to comply with laws and regulations of higher legal force, relevant case law (such as that of courts that unify country's legislation), and become an organic part of the entire legal order.

EU-UKRAINE ASSOCIATION AGREEMENT AND IMPLEMENTATION OBSTACLES

Ukraine lags behind the time schedule for implementing the EU Environmental Acquis, including the Industrial Emissions Directive as stated by the EU-Ukraine Association Agreement. There are several key systemic implementation obstacles to overcome stemming from Ukraine's non-membership in the EU:

- EU regulations have direct effect in all EU Member States, meaning that there is no need of any other act of Parliament in the Member State to turn them into law and their provisions can be invoked before national courts. **Legislation of Ukraine does not have a legal provision enabling a direct effect** and the EU-Ukraine Association Agreement or its implementing legislation in Ukraine does not have a special mechanism for that.²⁰
- Judgments by the EU Court of Justice as legal interpretations of the EU legal acts constitute an important source of the EU law. When developing new legal instruments or revising existing ones, the EU institutions take into account relevant case law to avoid implementation obstacles in the Member States or at the EU level. Ukraine cannot take properly into account this extensive experience of the EU member states in implementing EU secondary legislation and CJEU interpretations. Ignoring CJEU's case law and practical experience of the EU member states, however, may lead to development of the "Ukrainian acquis".²¹

¹⁹ Ibid, p. 22.

²⁰ Resource and Analysis Center "Society & Environment" (2019), Updating and Amending Annexes XXX and XXXI to the Association Agreement between the EU and Ukraine (Environment and Climate Change), available at [<http://www.rac.org.ua/uploads/content/549/files/aaupdate2019eng.pdf>], p. 4.

²¹ Ibid.

- EU legislation in all areas is dynamic. The EU-Ukraine Association Agreement does not foresee a mechanism for implementing the most recent versions of legal acts or involvement of Ukraine in the discussion over issues appearing on the EU agenda. In that case, Ukraine can only catch up with the EU.²²
- Ukraine is well beyond the scope of the EU Commission oversight and CJEU review, which have a huge impact on effective implementation of EU legislation. The EU-Ukraine Association Agreement (or other bilateral or national instruments) do not provide for a mechanism to review the transposition into national legislation and implementation of EU secondary legislation in Ukraine.²³

The EU-Ukraine Association Agreement contains exhaustive enumeration of EU legislation that Ukraine needs to implement. There have been proposals to amend the EU-Ukraine Association Agreement to expand the scope covered by Annex XXX (and Annex XXXI) by an array of environmental legal acts such as those related to environmental governance, e.g., Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, or legal acts related to industrial pollution and industrial hazards, e.g., Directive (EU) 2015/2193 on the limitation of emissions of certain pollutants into the air from medium combustion plants.

One of the key regulations that Ukraine needs to implement under the EU-Ukraine Association Agreement is the Industrial Emissions Directive. Prior to the 2019 parliamentary elections it was MENR leading the work on the implementation of this directive. In November 2018, MENR presented the Concept of implementation of state policy in the field of industrial pollution (“IP Concept”) for public discussion. The IP Concept was made a prerequisite for further development of the draft law on integrated pollution prevention and control. The work to complete the implementation process will be now taken over by MEPE. The IP Concept needs to be elaborated more thoroughly, as in the current version, it is missing clarity on a number of key issues such as the types of facilities to be regulated or authority responsible for issuing environmental permits.

CURRENT ENVIRONMENTAL PERMITTING SYSTEM AND ITS LOOPHOLES

Ukraine has a fragmented environmental permitting system, with large number of permits issued for different types of emissions by different authorities (oblast state administrations - for small and medium-sized enterprises and MENR - for the biggest and most polluting facilities). The fragmented system disregards the overall environmental impact of the enterprises’ activities. The conditions for issuing a permit are not determined on the basis of universal BAT (best available techniques) as envisioned by the Industrial Emissions Directive but rather somewhat vague maximum allowable emissions (MAE) and technological maximum allowable emissions (TMAE). No equivalent of the European Pollutant Release and Transfer Register (E-PRTR) exists.

²² Ibid, p. 5.

²³ Ibid.

Once the environmental permitting system is integrated, it is necessary to clearly indicate which authority will be responsible for issuing permits (the IP Concept now designates only a “responsible body”). In many EU Member States, environmental permits are issued by regional authorities (bureaus) or specialized environmental agencies, rather than ministries as central government authorities. We would recommend Ukraine follow this decentralized approach in determining authority to issue environmental permits.

In EU Member States that implemented the Industrial Emissions Directive (and related processes), only industrial and agricultural operations - energy industry, production and processing of metals, mineral industry, chemical industry, waste management, and other operations, such as livestock farming - exceeding the threshold values stated therein require the integrated permit. Other operators, not exceeding the threshold values, can file for the integrated permit on a voluntary basis. Note that the intention is not to license all industrial and agricultural activities, but only those with a high pollution potential. In this sense, efforts should be focused on the development of production risk assessment techniques and the quality of atmospheric air, as well as the implementation of these techniques in the permitting procedures for pollutant emissions.

As regards permit conditions Ukraine needs to replace the system where conditions for operating industrial facility are set on the basis of maximum allowable emissions (MAE) and technological maximum allowable emissions (TMAE) with a system, in which conditions for operating industrial facility will be set on the basis of the best available techniques (BAT) and BAT reference documents (BREFs) adopted by the decision of the European Commission. This is particularly relevant for determining the quality of environment in industrial agglomerations and in territories with various sources of emissions. At the same time, it is necessary to ensure that stakeholders at all levels are well aware of the allowable emissions and the kinds of materials that justify particular levels of these emissions for each enterprise.

SUGGESTIONS FOR LEGISLATIVE CHANGES

To introduce the notion of integrated permits requires legislative changes that will also regulate the issuance of permits for types of facilities and industrial activities foreseen by the Industrial Emissions Directive (e.g. combustion plants), thus preventing large installations with the greatest environmental impact from operating unrestrictedly. The regulation also needs to safeguard the right of the public to access information and to participate in the environmental permit issuance process and create an efficient enforcement mechanism.

Drawing on the experience of various (mainly) EU countries with implementing EU directives, in general, and Industrial Emissions Directive, in particular, we recommend the following: Ukraine should first review the IP Concept, determine the relevance of the feedback received, and, on that basis, determine whether to condition preparing the draft law on integrated pollution prevention and control by having the IP Concept completed. There are proposals to enact the Law on Prevention, Reduction, and Control of Industrial Pollution to transpose certain provisions of the Industrial Emissions Directive.

We highly recommend that Ukraine avoids implementing the Industrial Emissions Directive into a framework act (may it be Law on Prevention, Reduction, and Control of Industrial Pollution or any other) that defines basic concepts and principles, sets out a method of environmental protection, and the role of state and regional administration and that can be used in conjunction with other, more specialized, legislation. From a conceptual, structural, and systematic point of view, it is not the best solution to integrate specific procedural (IPPC permit) rules into a regulation that sets a framework for an array of other legislation related to environmental matters.

In jurisdictions where the IPPC (integrated pollution prevention and control) process is well established and the Industrial Emissions Directive well transposed, we can see that the core of the IPPC permit process is regulated in a separate act (e.g., the IPPC Act in the Czech Republic²⁴ or Environmental Protection Agency (EPA) Act of 1992 in Ireland). As this solution has proved suitable over time, Ukraine should take this example and propose a singular piece of legislation that will deal specifically with the IPPC process, while maintaining general environmental protection legislation as a separate framework law, if necessary. The law should have a clear organizational structure, be drafted unambiguously and understandably, and be logically divided into parts, chapters and/or other relevant sections.

It is important to clearly define the scope of the act. The IPPC Act of the Czech Republic can serve as an example law where in the introductory purpose and subject clause the obligations of operators of installations, procedures for granting an integrated permit, establishment of an integrated pollution register, the manner of collecting information on emissions and transfers of substances registered in the register and the provision of data therefrom, competences of the public administration bodies, the system of exchange of information on BAT, and sanctions for breach of obligations should be stated. It should also define important terms such as “installation,” “emission limit,” “best available technique,” etc. that will be used throughout the law. Indeed, most of these definitions (adjusted where necessary) can be adopted from the IPPC/Industrial Emissions Directive.

In the following sections, the law would lay down the IPPC process. Since the IPPC process relates only to selected installations that exceed certain threshold limits, these installations and thresholds need to be specified. Again, perhaps the easiest solution is to adopt Annex I of the Industrial Emissions Directive where the installations and thresholds are specified and include it as an annex to the law. The Industrial Emissions Directive requires the integrated permit applications meet certain mandatory requirements. The law could either attach the model application in an annex or, similar to the Czech legislation, adopt an implementing regulation that will contain the model application.

It is crucial to adequately define the participants to the procedure and their corresponding rights. It needs to be taken into consideration that the Industrial Emissions Directive requires that the public concerned (i.e., anyone affected or potentially affected by the operation), and not only participants, shall have access to the procedure and judicial review before the courts.

²⁴ Act No. 76/2002 Coll., on Integrated Pollution Prevention and Control, as amended.

The public must remain informed throughout the IPPC process, not only about the participants' submissions, but also about the steps taken by the authorities in the IPPC process. In this sense, it is necessary to ensure permanent and open access not only to the emission allowance registry, but also to a complete set of documents, on the basis of which these permit conditions and maximum emission volumes are determined. Information that needs to be communicated to the public is stated in Annex IV of the Industrial Emissions Directive. The Industrial Emissions Directive does not prescribe how the authority should communicate relevant information to the public, thus leaving the decision up to the Member States (Ukraine in this case).

Publication on authorities' notice boards and websites has proved cost-efficient in many Member States. Ireland or Germany serve as excellent examples in terms of using a website to make IPPC-related documentation publicly available. Regional newspaper and obligatory notices on the site also proved to be a suitable and inexpensive means of informing local residents of the upcoming application and IPPC process.

As regards setting of the binding conditions for the operation and determining the emission limits, the law needs to tackle BAT, BAT conclusions, and BREFs. While all three concepts should be defined in the law, it is neither necessary, nor suitable that all their texts are included therein. Regarding BAT, the law can implement (in the form of annex) the criteria for determining BAT as set out in Annex III of the Industrial Emissions Directive. BAT reference documents (BREFs) and BAT conclusions will be used to determine BAT. BREFs are European Commission documents that provide an overview of which technique and technology is, in a given field, on the level of BAT. As a living document, periodically updated, it would not be practical to include it in a law because any change in BREF would then require legislative amendment.

In order to make the implementation of BAT more clearly reflected in the integrated permits, the Industrial Emissions Directive places greater emphasis on BAT conclusions that are prepared to every BREF and constitutes an excerpt of the most significant parameters from the entire BREF. The BAT conclusions are approved by the European Commission, published in the Official Journal, and are binding upon the Member States. Again, similarly as BREFs, it would be impractical to include the BAT conclusions in the new law. The Industrial Emissions Directive requires that they be used as references in setting up the conditions of a facility's operation. Drafting high-quality legislation is as important as applying it correctly. Setting up the conditions of operation and applying BAT and other reference documents is a complex task that requires analytical skills, sound judgment, and a reasoned approach; to achieve that, many Member States organize periodic trainings and draft manuals on the application of BAT.

Regarding changes, reviews, and updates of the integrated permits and their conditions, the Industrial Emissions Directive does not require every change to be reported and obtain a permit, thus, the law needs to define *substantial change* (by adopting the Industrial Emissions Directive's definitions) and regulate the change/review process. The law needs to reflect that every four years the respective authority reviews the integrated permit conditions from its own initiative and to reflect respective BAT conclusion changes.²⁵ It is important to also bear in mind, however, that the practice of issuing perpetual

²⁵ Drafting a law represents a daunting and complex task and it is beyond the scope of the policy paper to elaborate on every possible provision. The analysis provided is not exhaustive and represents an overview of the most important points to consider.

environmental permits does not quite take into account the impact of climate change (both global and local), which in turn affects the dispersion of pollutant emissions.

As regards additional legislation to enact in order to complement introducing the integrated environmental permitting system and IPPC process the Committee of Environmental Policy, Nature Management, and Elimination of the Consequences of the Chernobyl Disaster of the Verkhovna Rada responsible for legislation on environmental issues should also consider the following acts: on National Emissions Register and the Transfer of Pollutants that would establish an equivalent of the European pollutant release and transfer register (PRTR) (more on the register see section 4 below - pollution monitoring). The REGULATION (EC) No 166/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC is directly applicable in the EU Member States, meaning that Member States do not need to implement any additional legislation to apply and enforce its provisions. Since Ukraine is not EU Member State additional (implementing) legislation is necessary. To strengthen the accountability for violating environmental legislation amendments to the Criminal Code and the Administrative Code are also highly recommendable.

4. AIR POLLUTION MONITORING

Air quality monitoring in Ukraine is a part of the State Environmental Monitoring System established by the CMU's (Cabinet of Ministers of Ukraine) decree on "State Environmental Monitoring System" (1998). The decree regulates the establishment of environmental monitoring system and provides general guidelines for monitoring atmospheric air, underground and ground water resources, soil, forests, radiation situation, etc.²⁶

The establishment of the air quality monitoring system is foreseen by the law "on the Protection of Atmospheric Air" (1992). According to this law, air quality monitoring system is a part of the state environmental monitoring system; its structure and responsible bodies are defined by decrees issued by the CMU.²⁷ The law specifies that the monitoring concerns the following:

- Installations that can have a negative impact on human health and on the quality of the air;
- Types and volumes of pollutants that are released into the air;
- Types and extent of influence of physical and biological factors on the atmosphere.²⁸

RECENT CHANGES AND THEIR IMPACT

The system of air quality monitoring has been recently revised by the CMU. On 14 August 2019, the CMU adopted a decree on "Some Issues of State Monitoring in the Field of Atmospheric Air Protection" (No. 827), which caused significant changes in the field. First, it abolished a decree on "Organising and Conducting Monitoring in the Sphere of Atmospheric Air Protection" (1999) and amended a decree on "Approval of Provision about State Environmental Monitoring System" (1998). Second, the CMU adopted a new "Order of State Monitoring in the Field of Atmospheric Air Protection".²⁹ Third, state institutions responsible for air monitoring both on national and regional levels have been defined.³⁰

26 CMU's Decree on State Environmental Monitoring System, No. 391, 30 March, 1998, available at [<https://zakon.rada.gov.ua/laws/main/391-98-%D0%BF>].

27 Law "on the Protection of Atmospheric Air", No. 2707, 16 October, 1992, article 32, available at [<https://zakon.rada.gov.ua/laws/show/2707-12>].

28 Law "on the Protection of Atmospheric Air", No. 2707, 16 October, 1992, article 31, available at [<https://zakon.rada.gov.ua/laws/show/2707-12>].

29 This Order establishes zones and agglomerations in the territory of Ukraine, defines the mechanism of organizing and implementing state monitoring in the field of atmospheric air protection, interaction of central and local executive authorities and executive bodies of the Autonomous Republic of Crimea regarding environmental protection, and local self-government bodies with monitoring and providing the said authorities with information for decision-making relating to the state of the atmosphere and informing the population.

30 CMU's Decree on Some Issues of State Monitoring in the Field of Atmospheric Air Protection, No. 827, 14 August 2019, available at [<https://zakon.rada.gov.ua/laws/show/827-2019-%D0%BF>].

CMU's decree No. 827 determines the following institutions as responsible for air quality monitoring: the MEPE, the Ministry of Health, the State Emergency Service of Ukraine, State Agency of Ukraine on Exclusion Zone Management, executive bodies of the Autonomous Republic of Crimea on environmental protection, oblast administration, Kyiv city administration, and executive bodies of city councils. Every institution, except for the MEPE, is responsible for conducting air quality monitoring in respective areas; the MEPE exercises general overview and proposes amendments to the system.

The institutional structure of the air quality monitoring system is further developed at regional level. At the oblast level, it consists of two bodies: departments within oblast administrations responsible for air quality monitoring and committees that control the monitoring process and consist of representatives of state and regional monitoring authorities. The decree also states that every oblast is responsible for developing regional air monitoring programmes.

The mandatory monitoring is also conducted by enterprises that emit pollutants into the atmospheric air. However, the expert community is sceptical about the accuracy of data provided by enterprises since the state does not have means to confirm them.

The CMU has also expanded the list of pollutants that should be monitored. Until recently, obligatory monitoring comprised only seven pollutants, namely: dust, nitrogen dioxide (NO₂), sulphur dioxide (SO₂), carbon dioxide (CO₂), formaldehyde (H₂CO), lead, and benzopyrene.³¹ Additional pollutants were monitored occasionally at regional and local levels.

The new decree (No. 827) substantially expanded the list. It is envisaged that the monitoring concerns the atmospheric air and atmospheric precipitation. The decree defines two groups of pollutants that are monitored - Group A and Group B; mandatory monitoring concerns only pollutants from Group A, which comprise sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and other nitrogen oxides, benzene (C₆H₆), carbon oxide (CO), lead, PM 10 and PM 2.5, arsenic, cadmium, mercury, nickel, benzopyrene, and ozone.

The system of air quality monitoring in Ukraine has indeed gone through substantial improvements. The institutional structure has been made more rigorous and clear. The number of monitored pollutants has been expanded by such hazardous pollutants as particulate matter (known as PM 10 and PM 2.5) and ozone. The recent changes also foresee further gradual improvement of the system, which had been outdated for a long time and had not represented the newest trends in environmental monitoring, especially the requirements of the EU-Ukraine Association Agreement and the respective provisions of the EU environmental acquis to be implemented by Ukraine.

For instance, the new government's official programme declaration envisages the establishment of a new air quality monitoring system.³² The new Cabinet of Ministers proposes to implement automatic

31 Dirty Skies Above: Regulation of Air Pollution in Ukraine and the EU. Comparative Study of Law, Policy, and Practice, Kyiv-Prague, 2019, p. 29.

32 Program of activities of the Cabinet of Ministers of Ukraine, aim 9.4. "The Ukrainian lives in a favorable and clean environment", September 2019, available at [<https://program.kmu.gov.ua/meta/ukrainec-zive-u-spriatlivomu-ta-cistomu-navkolisnomu-seredovisi>].

monitoring of industrial emissions as well as to create a system that will collect, analyse, and report on air quality data. However, it is not specified whether the government is planning to abolish the existing system and to replace it with a completely new one or to improve the existing one.

Further amendments are particularly necessary, as the reliability of the current system has suffered on many occasions. For instance, when, in October 2019, the quality of air in Kyiv worsened significantly, as proved by international AQM (air quality management) platforms, and the AQI (air quality index) for several days reached between 150 and 200 points, i.e. extremely poor,³³ the MEPE still informed that state monitoring stations had not detected any pollution.³⁴

RECOMMENDATIONS FOR FURTHER IMPROVEMENT

Taking into account the inefficiency of the current system and its numerous loopholes, which do not allow to measure air quality adequately, further changes are necessary.

As regards the institutional structure of the air quality monitoring system, **we recommend establishing a single authority to be responsible for overall air quality monitoring**. Ideally, it could be the State Environmental Inspection (SEI) (or the State Environmental Control Service as a possible successor of the SEI) as is the case in many European countries. For instance, in Denmark air pollution is monitored by the Environmental Protection Agency in collaboration with the National Centre for Environment and Energy (NERI).³⁵

Moreover, the SEI should also coordinate all national, regional, and local air quality monitoring plus have access to non-state monitoring networks which have been actively developing in Ukraine with the financial support of international organisations. For instance, civic monitoring stations in the Ukraine's most polluted cities (e.g. Kryvyj Rih, Zaporizhzhia, Kharkiv, Dnipro, Kramatorsk) have been installed in Ukraine within the framework of the Transition Promotion Programme funded by the Ministry of Foreign Affairs of the Czech Republic. Monitoring stations have also been installed throughout the country by other initiatives and volunteers. The data is now available online.³⁶

As of now, the SEI does not have monitoring functions. Even though it has the necessary capabilities and own laboratories, their data cannot be used in the decision-making process. This severely weakens its ability to take effective decisions to protect further environmental damage.

A special attention must be paid to air quality monitoring in residential, recreational zones and public spaces. Until 2017, when it was liquidated, the Sanitary and Epidemiological Service of Ukraine had fulfilled these functions. It is advisable to also transfer these functions to the SEI.

³³ Smog in Kyiv: What are the reasons and how to protect yourself? Ecoaction NGO, October 2019, available at [<https://ecoaction.org.ua/smoh-u-kyevi.html>].

³⁴ In Ukraine, concentrations of pollutants in the air within the usual parameters (updated), MEPE, October 2019, available at [http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245408189&cat_id=35109].

³⁵ Air protection monitoring programme, the Danish EPA, available at [<https://eng.mst.dk/air-noise-waste/air/air-pollution-monitoring-programme/>].

³⁶ The data may be accessed here: <http://eco-city.org.ua> or at <https://www.saveecobot.com/>.

Further, we recommend increasing the number of monitoring stations throughout Ukraine to enable close monitoring of air quality situation in the country. As of today, there are 162 stations in 53 cities,³⁷ which is not enough to provide a comprehensive assessment of a nation-wide situation. Additionally, it is recommended to install online sensors, observation posts, and to determine other key areas where monitoring should be conducted on a daily or monthly basis.³⁸ Without relevant, adequate, and complete monitoring data, efficient environmental control cannot be exercised.

The third key problem is that access to air quality data (results of measurements and observations) is currently restricted. The data is usually presented in a paper format or as a set of recommendations for the local councils; ordinary people cannot track the data. Therefore, we recommend the following:

- Establishing an online platform of air quality monitoring;
- Connecting all the sensors that monitor air quality into one system (both state and non-state);
- Providing data for a number of time spans, such as hours, days, weeks, months, and years.

In this case, the European Air Quality system serves as a good example.³⁹

It is advisable to integrate the standards and procedures governing the European air quality monitoring system into the Ukrainian air quality monitoring system. In this sense, Ukraine should start by implementing the ***EU Directive 2008/50/EC on ambient air quality and cleaner air for Europe***, which sets limits and target values for main air pollutants divided into five major groups:

1. Dust aerosol/suspended particulates PM10, PM2.5 (occasionally PM1);
2. Harmful pollutants such as SO₂;
3. Volatile organic compounds;
4. Heavy metals;
5. Contents of selected particles in PM10.⁴⁰

In order to make environmental data more accessible, Ukrainian government should work on establishing a pollution register that will integrate all information on emissions and transfers of hazardous substances under one umbrella and improve the management of this information (electronic reporting, completeness of check and data validation, data presentation). In this sense, it is important to streamline the form of monitoring the results of air quality measurement and to improve the procedure to access information for the public.

³⁷ Dirty Skies Above: Regulation of Air Pollution in Ukraine and the EU. Comparative Study of Law, Policy, and Practice, Kyiv-Prague, 2019, p. 29.

³⁸ Біла книга про реформу екологічного контролю, Екологія-Право-Людина, available at [<http://epl.org.ua/eco-analytics/bila-knyga-pro-reformu-ekologichnogo-kontrolyu/>], p. 15.

³⁹ European Air Quality Index, available at [<https://airindex.eea.europa.eu/>].

⁴⁰ Directive 2008/50/EC on ambient air quality and cleaner air for Europe, 21 May 2008, available at [<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008L0050>].

Ukraine's obligation to develop a pollution register stems from the Kyiv Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention, which aims to enhance public access to (environmental) information.⁴¹ A suitable example to follow for Ukraine is the Pollutant Release and Transfer Register (E-PRTR) of the EU, which was established in 2006.⁴²

The register should provide access to data about emissions into the air, water, and soil as well as follow the off-site transfers of waste and pollutants into wastewater. As in the EU, 91 pollutants should be monitored, such as mercury, sulfur oxides, particulate matter, ground-level ozone, etc. They are combined into seven groups: greenhouse gases, other gases, heavy metals, pesticides, chlorinated organic substances, other organic substances, and inorganic substances. The E-PRTR allows to see what pollutants are released into the environment by different facilities in chronological order.⁴³

We recommend following the EU framework and have the data in the register cover 65 economic activities in 9 industrial sectors, namely energy, production and processing of metals, mineral industry, chemical industry, waste and wastewater management, paper and wood production and processing, intensive livestock production and aquaculture, animal and vegetable products from the food and beverage sector, and other activities.⁴⁴

41 The Kyiv Protocol on Pollutant Release and Transfer Register, The United Nations Economic Commission for Europe, available at [<https://www.unece.org/env/pp/prtr.html>].

42 European pollutant register an important tool for EU in tackling industrial emissions, European Environmental Agency, 2019, [<https://www.eea.europa.eu/highlights/european-pollutant-register-an-important>].

43 European pollutant register an important tool for EU in tackling industrial emissions, European Environmental Agency, 2019, [<https://www.eea.europa.eu/highlights/european-pollutant-register-an-important>].

44 Regulation No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register of 18 January 2006, available at [<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006R0166>].

5. ENVIRONMENTAL INSPECTIONS

CURRENT SYSTEM OF ENVIRONMENTAL CONTROL IN UKRAINE

The system of environmental control in Ukraine was inherited from the Soviet Union, hence its institutional structure, functions, and the procedural rules of conducting inspections. As of now, the key institution responsible for the environmental control in Ukraine is the State Environmental Inspection (SEI). According to the CMU's decree on "State Environmental Inspection of Ukraine", the SEI "implements state policy on state supervision (control) in the field of environmental protection, rational use, reproduction, and protection of natural resources."⁴⁵

More precisely, the SEI controls how enterprises adhere to the permit conditions and environmental standards, and, when detecting violations, takes appropriate legal and administrative measures. It exercises state supervision of compliance with the requirements of environmental legislation in fields such as, but not limited to: land and subsoil protection, radiation control, protection of water resources, atmospheric air, waste management, general state of the environment, etc. However, preventing environmental damage was and is outside its scope of action as it had been the case during the USSR when the body was established.

After Ukraine became independent, it was weakened by a set of reforms. A series of reforms carried out between 2007 and 2012 deprived the SEI of a possibility to conduct spontaneous inspections; according to the existing rules, the SEI is obliged to notify an enterprise in writing at the latest 10 days before the inspection. The number and competences of its regional branches have been reduced.

According to the law "on the Protection of the Environment", local councils also exercise control functions in the field of environmental protection.⁴⁶

ENVIRONMENTAL CONTROL: KEY LOOPHOLES AND CHALLENGES

The environmental control system in Ukraine has been criticised many times for a variety of reasons. The biggest problems that exist as of today comprise high levels of corruption, inefficiency that translates into inability to prevent environmental damage and punish environmental law violations, low wages and insufficient financial support (it is funded on a residual basis), outdated material and technical resources, non-transparent system of decision-making, weak (enforcement) legislation, lack of liability for violating environmental laws, and the absence of unified electronic registers of natural resources.⁴⁷

⁴⁵ CMU's Decree on the State Environmental Agency, No 275, 19 April, 2017, article 1, available at [<https://www.dei.gov.ua/posts/38>].

⁴⁶ Law "on the Protection of the Environment", No. 1264-XII, 26 June 1991, available at [<https://zakon.rada.gov.ua/laws/show/1264-12>].

⁴⁷ Dirty Skies Above: Regulation of Air Pollution in Ukraine and the EU. Comparative Study of Law, Policy, and Practice,

The first and most troublesome problem is ineffective institutional organisation of the environmental control. Its functions are widely distributed among different institutions such as the SEI, the State Agency of Forest Resources of Ukraine, the State Service of Geology and Subsoil of Ukraine, the State Service of Ukraine for Geodesy, Cartography and Cadastre, the State Agency for Fish Resources. These functions overlap which causes confusion in terms of the scope of competence and stalemate situations. As a result, it creates a breeding ground for corruption and inefficiency, enables violations of environmental norms and standards often without punishment, and produces enormous financial losses for the enterprises, the state, and eventually citizens.

Secondly, due to the constant reform, the SEI's regional structure has been substantially weakened. The number of its offices has decreased, as well as the number of inspectors. In accordance with the recent reform, some of the regional (oblast) offices have been closed; new, interregional offices have been created. The information exchange between the SEI, oblast administrations and local authorities is weak and ineffective. There is, virtually, no cooperation between the environmental departments in the oblast administrations and the regional branches (offices) of the SEI.⁴⁸

Thirdly, the SEI does not have the authority to monitor the environment. As was previously described in part 3, the monitoring is done by a number of institutions, such as, for example, the Ukrainian Hydrometeorological Institute of the State Emergency Service of Ukraine. Without the monitoring function, the SEI cannot, on a regular basis, follow the state of the environment and properly react to violations of the environmental laws and regulations.

ENVIRONMENTAL CONTROL REFORM IN PROGRESS

The key directions for the environmental control reform were laid out in the **Concept of Reforming the System of State Supervision (Control) in the Field of Environmental Protection (*The State Concept*)**, adopted in May 2017.⁴⁹ This document provides for liquidation of the SEI and creation of a new authority of the environmental control - the State Environmental Protection Service. The concept prescribed, among others, the need to transfer all the functions of environmental control to one authority and to endow it with preventive, control, and monitoring functions. In this regard, the requirements of the EU Directive 2010/75/EC should have been taken into account by now but its implementation into the Ukrainian legislation has stalled.⁵⁰

The Concept set out strict time limits for the reform. It was provided that the new authority would be made operational until the end of 2017, which has not happened. It was also planned that in 2017

Kyiv-Prague, 2019, p. 30.

⁴⁸ Yehor Firsov, Екоінспекція. Старт, Українська правда - Блоги, 24 November 2019, available at [<https://blogs.pravda.com.ua/authors/firsov/5dda737a55372/>].

⁴⁹ CMU's Decree on the Concept of Reforming the System of State Supervision (Control) in the Field of Environmental Protection, No. 616-p, 31 May 2017, available at [<https://zakon.rada.gov.ua/laws/main/616-2017-%D1%80>].

⁵⁰ Охорона довкілля в Угоді про асоціацію між Україною та ЄС, доповідь Платформи громадянського суспільства Україна-ЄС, Брюссель, 18 травня 2017 року, ст. 18, available at [<https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Dovkillia-Fin-6.pdf>].

the CMU would issue a decree regulating the tasks of the new service, that the SEI and all its regional branches would be liquidated, and that the new staff would be hired.

It was also planned that the reform would be finished in 2020 with the new environmental control in place, new environmental standards and regulations, as well as improved system of environmental monitoring.

In fact, on 14 August 2019, the CMU adopted the decree on “Some Issues Concerning the State Environmental Control Service” and liquidated the SEI. It was expected that the new institution – the State Environmental Protection Service - would be created. Nevertheless, this had not happened. As a result, an organisational vacuum in the field of environmental control was created. The new government repealed the decree on 12 October 2019 and restored the SEI. A new temporary head of the SEI was appointed, who claims that the reform will be continued. The following changes have been proposed, among others:

- Adopting the law on environmental control;
- Transferring all environmental control functions from all institutions exclusively to the SEI;
- Increasing fines for violating environmental legislation, and
- Renewing inspections in Donetsk and Luhansk oblasts where they have been canceled since 2014.⁵¹

It should be remembered that the EU-Ukraine Association Agreement requires Ukraine to reform its system of environmental control and ensure the adherence to environmental legislation⁵².

RECOMMENDATIONS FOR IMPROVING ENVIRONMENTAL CONTROL SYSTEM

Taking into account the loopholes of the current system, we recommend starting the reform by reorganising the institutional structure of the environmental control system. First and foremost, all powers should be transferred to the SEI and, thus, the latter should be regarded as the only institution responsible for conducting environmental control. Second, the current regional structure of the SEI undermines its ability to effectively conduct inspections; the proposed reform where interoblast branches are created only worsens the situation. Thus, we recommend establishing SEI's branches in all oblasts and, where necessary, more than one branch. For instance, it is advisable to establish additional branches in cities with high level of industrial activity and, therefore, high levels of pollution, such as Kyiv, Kryvyi Rih, Kamianske, Mariupol, and some others. More than one branch should function in, at least, the following oblasts: Donetska, Dnipropovska, Zaporizhska, Kyivska. In order to increase the promptness and timeliness of the environmental control, there is a need to appoint environmental inspectors on the level of cities or amalgamated territorial communities.⁵³

⁵¹ Yehor Firsov, Екоінспекція. Старт, Українська правда - Блоги, 24 November 2019, available at [<https://blogs.pravda.com.ua/authors/firsov/5dda737a55372/>].

⁵² The Association Agreement between the EU and Ukraine (Environment and Climate Change), article 365, available at [https://www.kmu.gov.ua/storage/app/media/ugoda-pro-asociaciyu/TITLE_V.pdf].

⁵³ Біла книга про реформу екологічного контролю, Екологія-Право-Людина, available at [<http://epl.org.ua/eco-analytics/bila-knyga-pro-reformu-ekologichnogo-kontrolyu/>], p. 15.

The development of an electronic reporting and monitoring system (as part of an integrated permit) will automate some of the environmental control tasks. This might also potentially solve the main organizational problem of environmental control - organizing inspections in a large number of enterprises in large areas by restricted number of inspectors.

The next important issue where urgent decisions are necessary regards functions this reformed authority will have. With reference to the **EU Recommendation 2001/331/EC**, the SEI should have three sets of functions, namely:

- Checking compliance of controlled installations with the relevant environmental legislation;
- Monitoring pollution;
- Conducting activities necessary for establishing how the operators comply with the legislation, which include: site visits, monitoring achievement of environmental quality standards, consideration of audit reports and statements, verification of monitoring performed by the operators of installations, assessing their activities with respect to environmental standards, checking the premises, relevant equipment, and the adequacy of the environmental management at the site, checking the records kept by the operators.⁵⁴

The following tasks of the new reformed SEI have been already envisaged in the **Concept of Reforming the System of State Supervision (Control) in the Field of Environmental Protection**:

- State control (surveillance) in the field of environmental protection;
- Control over the use of natural resources;
- Monitoring of the environment, its dynamics, general state of the environment;
- Maintaining a single inventory of natural resources;
- Maintaining a single register of the users of natural resources;
- Maintaining a register of the activities and enterprises that pose an increased threat to the environment;
- Support the activities of the institute of public environmental control.⁵⁵

Additionally, it is advisable that the new authority also evaluates the effectiveness of environmental measures financed by state and local budgets (environmental funds). Overall, one of the tasks of the SEI should be to assist other authorities on national and regional level in adopting the most environmentally-friendly policies.⁵⁶

54 Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, available at [<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001H0331&from=EN>].

55 Overview of the Concept of Reforming the System of State Supervision (Control) in the Field of Environmental Protection, available at [<https://menr.gov.ua/content/koncepciya-reformuvannya-sistemi-derzhavnogo-naglyadu-kontrolyu-u-sferi-ohoroni-navkolishnogo-seredovishcha-v-ukraini.html>].

56 Щодо підходів до реформування Державної екологічної інспекції України, МАМА-86, available at [<https://mama-86.org/images/attachments/propositions/About-SEI-reform.pdf>].

With regard to the SEI's place in government institutional structure there are two options: to subordinate SEI either to the Cabinet of Ministers or to MEPE. Under the current conditions with the Ministry of the Environment merged with the Ministry of Energy subordinating SEI to the Cabinet of Ministers would certainly strengthen its independence of ministries and other central state administration authorities and solidify its position among executive bodies. More usual solution, looking at examples from abroad, would be to subordinate SEI to MEPE. In the Czech Republic, for example, the Czech Environmental Inspectorate - expert executive body charged with supervision in the field of environmental legislation enforcement - is subordinated to the Ministry of Environment with the Minister of Environment appointing the CEI's director. Notwithstanding the option selected the SEI must be independent in its decision-making and be able to freely decide when to conduct inspections (without consent from other institutions).⁵⁷

As regards the overall philosophy of the environmental control system, it should serve as an important tool to ensure compliance with environmental legislation. Prevention of environmental damage should be the key principle of environmental control.⁵⁸ This change of philosophy has been foreseen in the State Concept, which presumes that the key idea of the reform is to entrust the reformed SEI with the monitoring and preventive functions. More precisely, it is said that the SEI (or any other authority created) will monitor and identify violations of environmental legislation, prevent these violations, and define wider reasons behind environmental degradation.⁵⁹

Nevertheless, all this will not work if the new procedural rules governing environmental control are not introduced. The starting point is to give the SEI full power to exercise control and take immediate actions to prevent further pollution.

Site visits by the SEI should be both routine and non-routine. In the latter case, it can take place without informing the operator of a controlled installation in the following cases: as a response to complaints by natural persons or legal entities, for the purpose of investigation accidents and occurrences of non-compliance with environmental legislation.

In this regard, we also recommend to enact four levels of inspections with regard to what issue is addressed: a specific environmental problem (air pollution, water quality, waste disposal), an installation or an enterprise in general, environmental problems of a particular region, and ecosystem-based approach.⁶⁰

The inspections should be able to check activities of all natural persons and legal entities, which operate industrial installations that emit pollutants into the environment. Nevertheless, the priority should be

57 Біла книга про реформу екологічного контролю, Екологія-Право-Людина, available at [<http://epl.org.ua/eco-analytics/bila-knyga-pro-reformu-ekologichnogo-kontrolyu/>], p. 15.

58 EU framework on environmental inspections, available at [<https://ec.europa.eu/environment/legal/law/inspections.htm>].

59 The Concept of Reforming the System of State Supervision (Control) in the Field of Environmental Protection, available at [<https://zakon.rada.gov.ua/laws/main/616-2017-%D1%80>].

60 How we monitor compliance, U.S. Environmental Protection Agency, available at [<https://www.epa.gov/compliance/how-we-monitor-compliance>].

given to installations with the biggest possible impact on the environment and the biggest pollution produced such as the case in Denmark.⁶¹

As of today, the key purpose of such site visits is to check whether an enterprise adheres to the requirements mentioned in a permit or license. The new mechanism should be able to establish what kind of damage was caused and how serious it is, looking for a causal relationship between a particular activity and damage to the environment.⁶²

Regarding the way inspections are conducted, several points should be addressed:

1. *Initiation.* As regards routine inspections the State Environmental Agency should prepare them in advance and make the plan publicly available. They should be written in a way to guarantee that all installations are duly covered. Priority should be given to areas that have the strongest negative impact on the environment, thus, they should be covered more often and more regularly.

While preparing routine inspections, the SEI must take the following aspects into account:

- Pollution levels in the area surrounding an installation;
- Key environmental problems of a city, oblast, Ukraine as a whole;
- Goals in the environmental policy;
- Impact of installations on the environment, health, pollution levels, its economic and social consequences;
- Environmental data;
- Results of the previous inspections, compliance history;
- Increasing the time required for audits of businesses with numerous sources of emissions.

These inspections must also help operators to improve their understanding of the relevant environmental legislation and impact of their activities on the environment. The SEI must consider what actions might be necessary (policy changes, authorisation requirements) to reduce negative impact on the environment.⁶³

2. *Sanctions.* Polluters usually pay fines for violating environmental regulations. When a second violation is identified they pay fines or may face some other minor legal actions.⁶⁴ The Inspection does not have power to introduce other measures against the polluters. The SEI should have powers to take additional measures against the polluters: both fines and temporary suspension of activity.

⁶¹ Danish regulations in the field of environmental inspections, the Danish Environmental Protection Agency, available at [<https://eng.mst.dk/trade/industry/environmental-inspection/>].

⁶² Біла книга про реформу екологічного контролю, Екологія-Право-Людина, available at [<http://epl.org.ua/eco-analytics/bila-knyga-pro-reformu-ekologichnogo-kontrolyu/>], p. 8-9.

⁶³ Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, available at [<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001H0331&from=EN>].

⁶⁴ Dirty Skies Above: Regulation of Air Pollution in Ukraine and the EU. Comparative Study of Law, Policy, and Practice, Kyiv-Prague, 2019, p. 29-30.

In the latter case, it is necessary in case the pollution poses an imminent threat to the environment. The suspension of activity should take place, at the latest, on the next day after site visit. To avoid arbitrariness, the decision must be taken on the basis of day-to-day monitoring by the chief inspectors at a state or regional level.

The responsibility for environmental damage should be strengthened because today the polluters do not feel accountable for their damages and, at best, might pay a small fine, which is not enough to compensate for the damage sustained.⁶⁵

3. Inspectors. The SEI must be equipped with professional employees/inspectors with relevant education and professional background. They have to be selected on the basis of a transparent, open, and competitive public selection. The inspectors must be motivated to conduct site visits and to issue decisions that take into account the interests of the environment and the society first and foremost.

65 Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, available at [<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001H0331&from=EN>].

About us: **Arnika – Citizens Support Centre (Czech Republic)**

Established in 1996, the non-governmental organization Arnika has many years of experience promoting information openness, supporting public participation in decision making, and enforcing environmental justice. Its experts assist various civil society organizations, municipalities, and individuals in solving cases related to environmental pollution and its prevention throughout the Czech Republic. Arnika also participates in international projects focused on environmental protection and strengthening the implementation of the Aarhus Convention in Central and Eastern Europe, the Caucasus, and Central Asia. Arnika is a member organization of the Green Circle – an association of ecological non-governmental organizations of the Czech Republic, the European Environmental Bureau, and the European ECO Forum.

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<https://english.arnika.org/ukraine>

About us: **Clean Air for Ukraine**

Clean Air for Ukraine is a joint project of the Czech non-governmental organization ARNIKA and a network of local non-governmental organizations from the industrial regions of Ukraine. Our objective is to unite citizens and civic initiatives in industrial cities affected by air pollution, to improve free access to environmental information and helps to strengthen the public campaigns to achieve improvements at the local and national levels. The Clean Air for Ukraine project supports the development of a public monitoring network of air, soil, water and river sediments. We bring the transformation experience of the Czech Republic, involve scientists and experts in public campaigns and analytical research.

<http://www.cleanair.org.ua/>

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**More information:
www.cleanair.org.ua**